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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,334	12/06/2001	Lin Xu	4208-4057	3436
27123	7590	11/03/2006	EXAMINER	
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			AVELLINO, JOSEPH E	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/008,334 <i>[Handwritten Signature]</i>	XU ET AL.
	Examiner Joseph E. Avellino	Art Unit 2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 October 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 December 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### 1. Claims 1-28 are pending in this application.

#### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12, 15-22, 25 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Brachman et al. (USPN 6,704,576) (hereinafter Brachman).

1. Referring to claim 1, Brachman discloses a method for effectively using network resources (e.g. abstract), comprising:

forwarding to a reception group a service (i.e. broadcast) corresponding to said reception group (i.e. those uses wishing to receive the broadcast are considered within the reception group) (Figure 5, ref. 715);

upon a change in the cellular distribution of the reception group (i.e. a user leaves the broadcast), deciding whether a subset of said reception group should receive said service via a unicast link or via a multicast link (i.e. if more than one person is requesting the same data, the transmission is converted from unicast to a multicast transmission) (Figure 3; col. 5, line 66 to col. 6, line 2; col. 7, lines 20-25);

wherein the change in the cellular distribution of the reception group comprises a change in one or more cells with which one or more members of the reception group

have a relationship (i.e. a new user joins the reception group, and therefore must join a cell) (Figure 2; col. 5, line 58 to col. 6, line 19).

2. Claim 2 is rejected for similar reasons as stated above. Furthermore Brachman discloses the change does not result in there being no terminals in the reception group (i.e. the addition of a user to the group) (col. 5, line 66 to col. 6, line 2).

3. Claim 3 is rejected for similar reasons as stated above. Furthermore, Brachman discloses the selecting and deciding are performed upon a change in the physical location of a member of said group (this limitation can be construed that since the user is new, it originally had no location in the network, and therefore upon joining, now has a location in the group) (col. 5, line 66 to col. 6, line 2).

4. Claims 4 and 5 are rejected for similar reasons as stated above. Furthermore Brachman discloses the step of deciding further comprises determining the ideality of each option (i.e. if there are no users in the cell requesting the same content, then use the unicast link) (col. 5, line 58 to col. 6, line 19).

5. Claims 6-12 are rejected for similar reasons as stated above..

6. Referring to claim 15, Brachman discloses the deciding takes into account the bandwidth used and the per-unit-cost of that bandwidth (i.e. cost versus reliability and the speed of delivery) (col. 8, lines 31-40).

7. Claim 16 is rejected for similar reasons as stated above.

8. Referring to claim 17, Brachman discloses said deciding takes into account the percentage of total available link bandwidth used and the percentage of terminals using the link that would be served by using the bandwidth (i.e. if a threshold amount of cells has been reached, then convert the content to an RF broadcast) (Figure 2, ref. 240).

9. Claim 18 is rejected for similar reasons as stated above.

10. Referring to claim 19, Brachman discloses receiving a join indication from a terminal (i.e. a new user requests content) (Figure 2, ref. 205).

11. Claim 20 is rejected for similar reasons as stated above.

12. Referring to claim 21, Brachman discloses the join indication comprises a specification of the terminal's network interfaces (i.e. any request for content must inherently include the address of the sender, otherwise there would be no way to send

the content back to the requestor, in the packet network of Brachman, the address identifies the network interface of the client) (col. 2, lines 62-67).

13. Referring to claim 22, Brachman discloses the join indication comprises a specification of the networks currently available to the terminal (i.e. any request for content must include the address of the sender, which would indicate to the receiver what networks are available to the terminal, since the request must come over at least one network) (col. 2, lines 62-67).

14. Claims 25 and 26 are rejected for similar reasons as stated above.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brachman in view of Stanforth (U.S 2002/0058502).

15. Referring to claim 13, Brachman discloses the invention substantively as described in claim 1. Brachman furthermore discloses the deciding takes into account the bandwidth used (col. 5, lines 60-65). Brachman does not specifically disclose taking into account the spectral spectrum efficiency factor of each access system. In

analogous art, Stanforth discloses another method of effectively using network resources which discloses utilizing spectral efficiency factor as a way to improve wireless communications (p. 1, ¶ 5). It would have been obvious to one of ordinary skill in the art to combine the teachings of Stanforth with Brachman in order to improve spectral efficiency by interconnecting various differing access networks via the use of gateways as supported by Stanforth (p. 3, ¶ 13).

16. Claim 14 is rejected for similar reasons as stated above.

Claims 23, 24, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brachman in view of Kahn et al. (US 2002/0143951) (hereinafter Kahn).

17. Regarding claims 23 and 24, Brachman discloses the invention substantively as described in the claims above. Brachman does not specifically disclose the join indication comprises a desired start or stop time for reception of transmissions. In analogous art, Khan discloses another method for effectively using network resources which discloses the use of IGMP join message [0027-0030], which by definition includes: a) group address (networks available), b) a designated router or a way to determine a designated router; and c) the multicast address that identifies a particular transmission session, (session by definition have a start time and an ending time). It would have been obvious to one of ordinary skill in the art to combine the teaching of

Kahn with Brachman in order to utilize the advantages of multicast transmission while reducing the network load associated with that type of transmission as supported by Kahn (p. 2, ¶ 9).

18. Claims 27 and 28 are rejected for similar reasons as stated above.

***Response to Argument***

Applicant's arguments submitted October 18, 2006 have been fully considered but are not persuasive.

In the remarks, Applicant argues, in substance, that (1) Brachman does not disclose that the change in the cellular distribution of the reception group comprises a change in one or more cells with which a user has a relationship.

As to point (1) the Office respectfully disagrees. Applicant's Attention is directed to Figure 3 of Brachman, which goes into detail the procedure for when a user leaves a unicast/multicast/simulcast broadcast. Applicant will appreciate that the system will determine if there are any more users in the broadcast, and, if so, the rest of the users (i.e. the subset) will be evaluated to determine if a unicast link (i.e. if there is only one other person) or a multicast link (more than one person) should be utilized to continue the broadcast. This can be construed as "changing the relationship with one or more cells" since the user which leaves the broadcast does not have a relationship with the

particular cell anymore. Applicant's can appreciate that col. 7, lines 20-25, that a user can leave the broadcast by "logging off the network". This clearly meets the limitation of "a user changing the relationship with one or more cells". By this rationale, the rejection is maintained.

### ***Conclusion***

19. Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993). Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly, define the claimed invention.

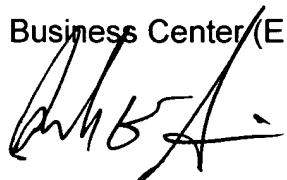
20. This is a Request for Continued Examination. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph E. Avellino, Examiner  
October 23, 2006